

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 223

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 34-10-1-3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3. If an offender has filed at least three (3) civil actions in which a state court has dismissed the action or a claim under IC 34-58-1-2, the offender may not file a new complaint or petition as an indigent person under this chapter, unless a court determines the offender is in immediate danger of serious bodily injury.**

SECTION 2. IC 35-44-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 9. (a) As used in this section, "juvenile facility" means the following:**

- (1) A secure facility (as defined in IC 31-9-2-114) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.
- (2) A shelter care facility (as defined in IC 31-9-2-117) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(b) Except as provided in subsection (d), a person who, without the prior authorization of the person in charge of a penal facility or juvenile

C
o
p
y



facility knowingly or intentionally:

- (1) delivers, or carries into the penal facility or juvenile facility with intent to deliver, an article to an inmate or child of the facility;
- (2) carries, or receives with intent to carry out of the penal facility or juvenile facility, an article from an inmate or child of the facility; ~~or~~
- (3) delivers, or carries to a worksite with the intent to deliver, alcoholic beverages to an inmate or child of a jail work crew or community work crew; **or**
- (4) possesses in or carries into a penal facility or a juvenile facility:**

(A) a controlled substance; or

(B) a deadly weapon;

commits trafficking with an inmate, a Class A misdemeanor.

(c) If the person who committed the offense under subsection (b) is an employee of:

- (1) the department of correction; or
- (2) a penal facility;

and the article is a cigarette or tobacco product (as defined in IC 6-7-2-5), the court shall impose a mandatory five thousand dollar (\$5,000) fine under IC 35-50-3-2, in addition to any term of imprisonment imposed under IC 35-50-3-2.

(d) The offense under subsection (b) is a Class C felony if the article is:

- (1) a controlled substance; ~~or~~
- (2) a deadly weapon; **or**
- (3) a cellular telephone or other wireless or cellular communications device.**

SECTION 3. P.L.216-2007, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: SECTION 56. (a) As used in this SECTION, "committee" refers to the sentencing policy study committee established by subsection (c).

(b) The general assembly finds that a comprehensive study of sentencing laws and policies is desirable in order to:

- (1) ensure that sentencing laws and policies protect the public safety;
- (2) establish fairness and uniformity in sentencing laws and policies;
- (3) determine whether incarceration or alternative sanctions are appropriate for various categories of criminal offenses; and
- (4) maximize cost effectiveness in the administration of

C
o
p
y



sentencing laws and policies.

(c) The sentencing policy study committee is established to evaluate sentencing laws and policies as they relate to:

- (1) the purposes of the criminal justice and corrections systems;
- (2) the availability of sentencing options; and
- (3) the inmate population in department of correction facilities.

If, based on the committee's evaluation under this subsection, the committee determines changes are necessary or appropriate, the committee shall make recommendations to the general assembly for the modification of sentencing laws and policies and for the addition, deletion, or expansion of sentencing options.

(d) The committee shall do the following:

- (1) Evaluate the existing classification of criminal offenses into felony and misdemeanor categories. In determining the proper category for each felony and misdemeanor, the committee shall consider, to the extent they have relevance, the following:

- (A) The nature and degree of harm likely to be caused by the offense, including whether the offense involves property, irreplaceable property, a person, a number of persons, or a breach of the public trust.
- (B) The deterrent effect a particular classification may have on the commission of the offense.
- (C) The current incidence of the offense in Indiana.
- (D) The rights of the victim.

- (2) Recommend structures to be used by a sentencing court in determining the most appropriate sentence to be imposed in a criminal case, including any combination of imprisonment, probation, restitution, community service, or house arrest. The committee shall also consider the following:

- (A) The nature and characteristics of the offense.
- (B) The severity of the offense in relation to other offenses.
- (C) The characteristics of the defendant that mitigate or aggravate the seriousness of the criminal conduct and the punishment deserved for that conduct.
- (D) The number of the defendant's prior convictions.
- (E) The available resources and capacity of the department of correction, local confinement facilities, and community based sanctions.
- (F) The rights of the victim.

The committee shall include with each set of sentencing structures an estimate of the effect of the sentencing structures on the department of correction and local facilities with respect to

C
O
P
Y



both fiscal impact and inmate population.

(3) Review community corrections and home detention programs for the purpose of:

- (A) standardizing procedures and establishing rules for the supervision of home detainees; and
- (B) establishing procedures for the supervision of home detainees by community corrections programs of adjoining counties.

(4) Determine the long range needs of the criminal justice and corrections systems and recommend policy priorities for those systems.

(5) Identify critical problems in the criminal justice and corrections systems and recommend strategies to solve the problems.

(6) Assess the cost effectiveness of the use of state and local funds in the criminal justice and corrections systems.

(7) Recommend a comprehensive community corrections strategy based on the following:

- (A) A review of existing community corrections programs.
- (B) The identification of additional types of community corrections programs necessary to create an effective continuum of corrections sanctions.
- (C) The identification of categories of offenders who should be eligible for sentencing to community corrections programs and the impact that changes to the existing system of community corrections programs would have on sentencing practices.
- (D) The identification of necessary changes in state oversight and coordination of community corrections programs.
- (E) An evaluation of mechanisms for state funding and local community participation in the operation and implementation of community corrections programs.
- (F) An analysis of the rate of recidivism of clients under the supervision of existing community corrections programs.

(8) Propose plans, programs, and legislation for improving the effectiveness of the criminal justice and corrections systems.

(9) Evaluate the use of faith based organizations as an alternative to incarceration.

(10) Study issues related to sex offenders, including:

- (A) lifetime parole;
- (B) GPS or other electronic monitoring;
- (C) a classification system for sex offenders;
- (D) recidivism; and

C
o
p
y



(E) treatment.

(e) In 2009, the committee shall evaluate whether the state should pay all costs of trial in a prosecution for an offense committed at a state correctional facility.

~~(e)~~ **(f)** The committee may study other topics assigned by the legislative council or as directed by the committee chair. The committee may meet as often as necessary.

~~(f)~~ **(g)** The committee consists of twenty (20) members appointed as follows:

- (1) Four (4) members of the senate, not more than two (2) of whom may be affiliated with the same political party, to be appointed by the president pro tempore of the senate.
- (2) Four (4) members of the house of representatives, not more than two (2) of whom may be affiliated with the same political party, to be appointed by the speaker of the house of representatives.
- (3) The chief justice of the supreme court or the chief justice's designee.
- (4) The commissioner of the department of correction or the commissioner's designee.
- (5) The director of the Indiana criminal justice institute or the director's designee.
- (6) The executive director of the prosecuting attorneys council of Indiana or the executive director's designee.
- (7) The executive director of the public defender council of Indiana or the executive director's designee.
- (8) One (1) person with experience in administering community corrections programs, appointed by the governor.
- (9) One (1) person with experience in administering probation programs, appointed by the governor.
- (10) Two (2) judges who exercise juvenile jurisdiction, not more than one (1) of whom may be affiliated with the same political party, to be appointed by the governor.
- (11) Two (2) judges who exercise criminal jurisdiction, not more than one (1) of whom may be affiliated with the same political party, to be appointed by the governor.
- (12) One (1) board certified psychologist or psychiatrist who has expertise in treating sex offenders, appointed by the governor to act as a nonvoting advisor to the committee.

~~(g)~~ **(h)** The chairman of the legislative council shall appoint a legislative member of the committee to serve as the chairperson of the committee. Whenever there is a new chairman of the legislative

C
o
p
y



council, the new chairman may remove the chairperson of the committee and appoint another chairperson.

~~(h)~~ (i) If a legislative member of the committee ceases to be a member of the chamber from which the member was appointed, the member also ceases to be a member of the committee.

~~(i)~~ (j) A legislative member of the committee may be removed at any time by the appointing authority who appointed the legislative member.

~~(j)~~ (k) If a vacancy exists on the committee, the appointing authority who appointed the former member whose position is vacant shall appoint an individual to fill the vacancy.

~~(k)~~ (l) The committee shall submit:

- (1) an interim report of the results of its study to the legislative council before November 1, 2008; and
- (2) a final report of the results of its study to the legislative council before November 1, 2010.

The interim and final reports must be in an electronic format under IC 5-14-6.

~~(l)~~ (m) The Indiana criminal justice institute shall provide staff support to the committee.

~~(m)~~ (n) Each member of the committee is entitled to receive the same per diem, mileage, and travel allowances paid to individuals who serve as legislative and lay members, respectively, of interim study committees established by the legislative council.

~~(n)~~ (o) The affirmative votes of a majority of the voting members appointed to the committee are required for the committee to take action on any measure, including the final report.

~~(o)~~ (p) Except as otherwise specifically provided by this act, the committee shall operate under the rules of the legislative council. All funds necessary to carry out this act shall be paid from appropriations to the legislative council and legislative services agency.

~~(p)~~ (q) This SECTION expires December 31, 2010.

SECTION 4. IC 34-58-2-1 IS REPEALED [EFFECTIVE JULY 1, 2009].

SECTION 5. **An emergency is declared for this act.**

C
o
p
y



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

C
O
P
Y

